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मध्यप्रदेश राजपत्र

(असाधारण) प्राधिकार से प्रकाशित

क्रमांक 484]

भोपाल, बुधवार, दिनांक 15 दिसम्बर 2021—अग्रहायण 24, शक 1943

पंचायत एवं ग्रामीण विकास विभाग
मंत्रालय, वल्लभ भवन, भोपाल

भोपाल, दिनांक 15 दिसम्बर 2021

No. F 2-6-2021-XXII-प.-1.—The following draft of rules which the State Government proposes to make in exercise of the powers conferred by sub-section (1) and (2) of Section 32 of the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 (42 of 2005) and in supersession of previous notification dated 28th June, 2013 issued in this behalf and according to the Order No. J11060/54/2020-RE-III(373836)-NREGA, dated 21st January, 2021 of the Government of India, Ministry of Rural Development issued under sub-section (1) of Section 27 of the said Act is

hereby published as required under sub-section (1) of section 32 of the said Act for the information of all persons likely to be affected thereby and notice is hereby given that the said draft of rules shall be taken into consideration on the expiry of 30 days from the date of publication of this notice in the Madhya Pradesh Gazette.

Any objection or suggestion which may be received from any person with respect to the said draft of rules on or before the period specified above shall be considered by the State Government.

DRAFT OF RULES

CHAPTER I PRELIMINARY

1. Short title and commencement. -

- (1) These rules may be called the Mahatma Gandhi National Rural Employment Guarantee (Appointment, Powers and Duties of the Ombudsman) Madhya Pradesh Rules, 2021.
- (2) They shall come into force from the date of their publication in the Madhya Pradesh Gazette.

2. Application.-

These rules shall apply for the grievances received and shall apply extend to the whole of the State of Madhya Pradesh.

3. Definitions.- In these rules, unless the context otherwise requires,-

- (a) "Act means the Mahatma Gandhi National Rural Employment Guarantee Act, 2005;

- (b) "award" means an award passed by the Ombudsman appointed under these rules;
- (c) "competent representative" means such a person who is duly authorized by the complainant and who is his representative for proceedings before the Ombudsman;
- (d) "grievance" means an oral or written grievance under rule 12 which includes claims of any person due to result of maladministration of Scheme worker or authority, fatal injustice or casual grief's;
- (e) "Office bearer" means a panch, sarpanch or up-sarpanch of any Gram Panchayat under the Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (No. 1 of 1994);
- (f) "Ombudsman" means a person acting as Ombudsman;
- (g) "Scheme worker or authority" means a person or person entrusted with powers and duties under the Scheme;
- (h) "State Government" means the State of Madhya Pradesh.

CHAPTER II OMBUDSMAN OF THE SCHEME

4. Jurisdiction, tenure, autonomy, remuneration, office, technical and administrative support to Ombudsman of the Scheme.-

- (1) State Government shall appoint MGNREGA Ombudsman for each District (The districts having expenditure less than average expenditure of state in last 2 years may be clubbed together to have a common Ombudsman). Smaller Districts having low expenditure under MGNREGS shall be clubbed together.

Selection Committee for Ombudsman shall have following members :

- Additional Chief Secretary of the State Government nominated by Chief Secretary of the State for the purpose – Chairperson;
- Representative of Union Ministry of Rural Development – Member;
- Eminent Civil Society Person nominated by Union Ministry of Rural Development – Member;
- Principal Secretary/Secretary of Department of Panchayat and Rural Development – Member Convener.

(2) State Government shall appoint MGNREGA Ombudsman after the recommendation of Selection Committee. Selection committee shall also have the power of terminating the Ombudsman in case of dissatisfactory performance after giving opportunity of being heard.

(3) Selection of suitable persons for Ombudsman shall be based on consideration of eminent 'Standing and impeccable integrity with at least ten years of experience in public administration, law, academics, social work or management as per documents furnished alongwith the application, experience in working with people or community organization shall be given preference/waitage. No person who is a member of recognised political party or a banned organisation shall be considered for appointment as Ombudsman. Each person shall be required to file a

declaration to this effect along with the application. The person selected as Ombudsman must be physically active and capable of conducting field tours, inspections and visits to remote rural locations in the districts.

- (4) Applicant must have atleast ten years of experience in respective field. It shall be reflected on their documents furnished along with the application. Experience in working with people or community organization is an obligation.
- (5) In the selection of Ombudsman, preference shall be given to a person resident of the same or neighboring District.
- (6) Application shall be invited through open advertisement. Application for the post shall be invited on proforma prescribed by the State Government. Based on the received applications the Selection Committee shall prepare a district-wise panel of suitable persons for consideration for appointment as Ombudsman and rank them in order of preference. No written test or examination shall be conducted while an interview and an internal marking system should be evolved by the Selection Committee to the rank persons in order of preference. Prior to appointment, the panel prepared by the Selection Committee shall be published on the official website of the State and the official website of the nodal department to invite

comments from the public. On expiry of 30 (thirty) days of publication, the comments received may be examined by the Selection Committee. All comments and objections may be settled within 30 (thirty) days of the date of expiry of the period for inviting comments. Anonymous and pseudonymous comments and objections shall not be considered unless they contain allegations that can be easily verified from the official records without further inquiry.

- (7) Approved district wise panel of eligible persons shall be valid for 2 (two) years, extendable not more than twice by one year each. In case there is any vacancy due to resignation, removal, death etc., the person next in the approved panel shall be offered the appointment as Ombudsman without calling for a fresh meeting of the Selection Committee. The Ombudsman shall be appointed for tenure of 2 (two) years extendable not more than twice by one year each based on a performance appraisal process or till the incumbent attains the age of 68 (sixty eight) years, whichever is earlier. There shall be no reappointment.
- (8) The persons selected from the panel for appointment against a vacancy shall be issued a letter appointing them Ombudsman for the district specified and shall mention the term and conditions of such appointment.
- (9) State Government shall organize orientation training for the benefit of the Ombudsmen to acquaint them

with the rights and entitlements enshrined in the MGNREG Act and the Operational Guidelines as well as related procedures. Such an orientation must be held within a month from their date of appointment.

- (10) The Ombudsman may be terminated by the State Government on the recommendation of the Selection Committee. The Selection Committee shall record the reasons for its recommendation. Such recommendation shall be made to the Chief Secretary of the State Government who shall pass appropriate orders thereon. An Ombudsman, may by serving one month notice of his/her intention, relinquish the work of Ombudsman.
- (11) Written and signed complaint against ombudsman may be made to the Chief Secretary of the State Government and Principal Secretary of Rural Development by any aggrieved party, including MGNREGA authorities or MGNREGA beneficiaries, duly supported by facts and documentary evidence. Anonymous, pseudonymous and frivolous complaints should not be entertained unless prima facie they contain allegation that can be verified from official documentary record without 'further' inquiry.

5. Autonomy of Ombudsman.-

Except as provided in the MGNREGA Act and these instructions, officials of Central or State Government shall not have authority to issue any direction or instruction to an Ombudsman with regard to the discharge of his duties.

6. Remuneration.-

- (1) Subject to any notification by the State Government, the Ombudsman shall be allowed remuneration, in the form of a fee of Rs. 1000/- (one thousand) per sitting with maximum upper limit of Rs.20,000!- (twenty thousand) per month.
- (2) Sitting means per day functioning, irrespective of number of cases handled and its duration in terms of working hours. A sitting could be for a part of a day also. All sittings should be properly documented and should be justified by the work discharged. The frequency of sitting by ombudsman shall be need based and cannot be fixed. The place of sitting may be decided by the Ombudsman taking into consideration the convenience of MGNREGAS workers concerned.
- (3) State Government may pay an additional amount to Ombudsman over and above the sitting fee prescribed by the Ministry from its own financial resources, either with regard to the sitting fee or the maximum upper limit.
- (4) Sitting fee and allowances shall be paid timely-by the State Government. Wherever Ombudsman wants to visit any part of the district for the purpose of conducting field enquiry, the DPC shall provide suitable transport facility.

7. Territorial Jurisdiction.-

- (1) In case an Ombudsman is not available for any reason in a district, including simple leave of absence, an Ombudsman of an adjoining district may be given all or any of the work of the district as may be specified.
- (2) In ease of termination or relinquishment, Ombudsman of the adjoining district may be given charge of the district till new appointment is made which shall be not later than three months from the date of vacancy.

8. Location of Office and Administrative Support.-

- (1) The office of the Ombudsman of the Scheme shall be located in the office of Chief Executive Officer Zila Panchayat.
- (2) Technical and administrative support will be provided by the DRDA or any other body specified by the State Government in this behalf. All necessary support to enable the Ombudsman to carry out the assigned functions, including support staff, office equipments, complaint box, and telephone helpline etc. shall be provided to the.

9. TA/DA and Transport.-

- (1) TA/DA at rates admissible to class-I officers of the State Government shall be allowed. In case no such uniform rates are available, the State Government may fix rates for the purpose. State Government shall provide a vehicle from its local pool to an Ombudsman for official purpose as per need. However, no new

vehicle shall be purchased for the use of Ombudsman from MGNREGA fund. In case of travel by Ombudsman in his/her own or hired vehicle for official purpose, district concerned may reimburse the cost of travel, at the rates fixed by the State Government.

- (2) Office expenditure, sitting fee and TA/DA etc. incurred on the office of Ombudsman shall be borne by States from 6% administrative expenditure permitted under section 22 (1) (C) of the MGNREGA.

Chapter III

10. Powers and responsibilities of the Ombudsman.-

- (1) The Ombudsman of the Scheme shall have the following powers, namely :-
 - (a) to receive grievances from Scheme workers and other person on any one or more issues specified in rule 7;
 - (b) to consider the grievances and facilitate their disposal in accordance with these rules.
- (2) The Ombudsman of the Scheme shall have the powers, namely:-
 - (a) summoning and enforcing the attendance of any person the from any part of the State and examining him on oath;
 - (b) requiring the discovery and production of any document;
 - (c) receiving evidence on affidavits;
 - (d) receiving any public record or copy thereof from any office;

(e) issuing commission for examination of witnesses and documents.

(3) The Ombudsman may require the Scheme authority to provide any information and to furnish certified copies of any document relating to the subject matter of the grievance which is or is alleged to be in his possession:
Provided that in the event of failure of such authority to comply with the requisition without any sufficient cause, the Ombudsman of the Scheme may, if he deems fit, draw the inference that the information, if provided, or copies, if furnished, would be unfavorable to the concerned Scheme Authority.

(4) The Ombudsman may issue direction for conducting spot investigation.

(5) The Ombudsman may initiate proceedings suo motu in the event of any circumstances arising within his jurisdiction that may cause any grievance.

(6) The Ombudsman may engage experts for facilitating the disposal of grievance.

(7) The Ombudsman may investigate a complaint and report its finding to the State Government and may also recommend disciplinary and punitive action, if deems appropriate.

11. Duties of the Ombudsman.-

The Ombudsman shall have the following duties, namely:-

(a) he shall be responsible for the conduct of business in his office;

(b) he shall maintain confidentiality of any information or document coming into his knowledge or possession in the course of discharge of his duties and not to disclose such information or document to any person except with the consent of the person furnishing such information or document:

Provided that nothing in this clause shall prevent Ombudsman from disclosing information or documents furnished by a party in a grievance to the other party or parties, to the extent considered by him to be reasonably required to comply with the principles of natural justice and fair play in the proceedings;

(c) he shall send a report to the State Government after making an inquiry recommending appropriate action. The report shall specially highlight cases where action needs to be taken against erring Scheme functionaries. The report will be accompanied with primary evidence needed to initiate action against the delinquent person;

(d) he shall furnish a report every year containing a general review of activities of the office of the Ombudsman during the preceding financial year to the State Government along with such other information as may be considered necessary by him. In the annual report, the Ombudsman, on the basis of grievances handled by him, will review the quality of the working of the Scheme Authorities and make recommendations to improve implementation of the Scheme. The report shall be put on the Scheme website;

- (e) he shall compile a list of reports sent by him between April and March of each financial year in respect of every Scheme Authority complained against and report it to the State Government. This report shall also be kept on the Scheme website.
- (f) if he finds fatal injustice or grief to a person due to maladministration he may pass an award in favour of the complainant.

CHAPTER IV

PROCEDURE FOR REDRESSAL OF GRIEVANCES

12. Subjects of the grievances.-

A grievance pertaining to any one or more of the following subjects alleging deficiency in the implementation of the Scheme may be filed with the Ombudsman:

- (i) the Gram Sabha;
- (ii) registration of households and issue of job cards;
- (iii) custody of job cards;
- (iv) demand for work;
- (v) issue of dated acknowledgement against submission of application for work;
- (vi) payment of wages;
- (vii) payment of unemployment allowance;
- (viii) discrimination on the basis of gender;
- (ix) worksite facilities;
- (x) measurement of work;
- (xi) quality of work;

- (xii) use of machines;
- (xiii) engagement of contractors;
- (xiv) operation of accounts in the bank or post offices;
- (xv) registration and disposal of grievances;
- (xvi) Verification of muster rolls;
- (xvii) inspection of documents;
- (xviii)use of funds;
- (xix) release of funds;
- (xx) social audit;
- (xxi) maintenance of record.
- (xxii)deprivation of any entitlement assured in the
Act/Schedules.

13. Procedure of filing of grievance and disposal.-

- (1) Any person who has a grievance against the Scheme Authority or worker may, himself or through his authorised competent representative, make a grievance against the Scheme Authority or worker in writing or oral to the Ombudsman.
- (2) A complaint may be filed as far as possible by a person or persons themselves or through such competent representative for whom Ombudsman permits.
- (3) The grievance shall be duly signed by the complainant or his authorised competent representative, if any, and shall state clearly the name and address of the complainant, the name of the office and official of the department against whom the grievance is made, the facts giving rise to the grievance supported by documents, if any, relied on by the complainant and the relief sought from the Ombudsman.

- (4) A grievance made through electronic means shall also be accepted by the Ombudsman and a print out of such grievance shall be taken on the record of the Ombudsman.
- (5) A printout of the grievance made through electronic means shall be signed by the complainant at the earliest possible opportunity before the Ombudsman takes steps for disposal.
- (6) The signed printout shall be deemed to be the grievance and it shall relate back to the date on which the grievance was made through electronic means.
- (7) No grievance to the Ombudsman shall lie if the grievance is in respect of the same subject matter which was disposed by the office of the Ombudsman in any previous proceedings whether or not received from the same complainant or along with any one or more complainants or any one or more of the parties concerned with the subject matter.
- (8) No grievance shall be made to the Ombudsman on an issue which has been or is the subject matter of any proceeding in an appeal, revision, reference or writ before any Tribunal or Court.

14. Proceedings to be summary in nature.-

- (1) The Ombudsman shall not be bound by any rules of evidence and may follow such procedure that appears to him/her to be fair and proper in accordance with the principles of natural justice. The proceedings before the Ombudsman shall be summary in nature.

15. Disposal of complaints.-

- (1) On receipt of the complaint, Ombudsman may refer the complaint to the appropriate MGNREGA authority for disposal within seven (07) days. In the event of failure of the MGNREGA authority to dispose the complaint, the matter may be taken up by the Ombudsman for disposal.
- (2) The Ombudsman shall cause a notice of the receipt of the complaint along with a copy of the complaint to be sent to the MGNREGA authority complained against.
- (3) When facts of the case are admitted by the parties, the Ombudsman shall dispose the case in accordance with the requirements of the MGNREGA Act, Rules and Guidelines.
- (4) If the facts are not admitted by the parties in a case, Ombudsman may pass an Award after affording the parties reasonable opportunity to present their case. Ombudsman shall be guided by the evidence placed before him by the parties, the reports of social audits, if any, the provisions of MGNREGA Act and Scheme and practice, directions, and instructions issued by the State Government or the Central Government from time to time and such other factors which in his/her opinion are necessary in the interest of justice.
- (5) The Ombudsman may conduct a spot investigation in case it is required, to enable the matter to be disposed of satisfactorily; or ask for a report from a MGNREGA functionary based on a spot visit. In case the State

Government issues guidelines for the purpose, he may also call for a report from an expert. Normally a spot investigation should be done with advance notice to all parties and to the local Gram Panchayat, and presence of parties. A separate spot investigation summary shall be prepared by the Ombudsman on the spot and signed by any of the parties who wish to do so. However, if the Ombudsman is of the view that a surprise inspection is essential to elicit the correct position, he may do so after, informing the Programme Officer of the general location of the spot inspection in all such cases. He shall in his spot investigation summary record, the details of persons actually present, and shall invariably take photographs of the site and of the persons present and attach a print out with the spot investigation summary. In case spot investigation was done, copy of the spot investigation summary shall also be attached to the report of the Ombudsman.

(6) Ombudsman shall attend the public hearing of social audit as far as practicable and suo moto take on file all cases where due entitlements are not provided for disposal as per these guidelines.

16. Awards by the Ombudsman and Appeal.-

- (1) If the facts are not admitted by the parties in a case, the Ombudsman may pass an award, after affording the parties reasonable opportunity to present their case. He shall be guided by the evidence placed before him by the parties, the reports of social audits, if any, the provisions of the Act and Scheme and practice, directions and instruction issued by the State Government or the Central Government from time to time and such other factors which in his opinion are necessary in the interest of justice.
- (2) The award passed under sub-rule (1) shall be specific consisting of the following components, namely :-
 - (i) details of the parties of the case;
 - (ii) brief facts of the case;
 - (iii) issues for consideration;
 - (iv) findings against issues along with reasons;
 - (v) cost, if any.
- (3) If a complaint is found to be false, malicious or vexatious, the Ombudsman shall, for reasons to be recorded in writing, dismiss the complaint and make an order that the complainant shall pay to the opposite party cost as deemed appropriate by the Ombudsman.
- (4) A copy of the award shall be sent to the complainant and the Scheme Authority.

(5) A representative of Programme Officer or District Programme Co-ordinator may appear in the cases before the Ombudsman where the Programme Officer or District Programme Co-ordinator is a party. Programme Officer or District Programme Co-ordinator shall appear before the Ombudsman only when a proceeding is taken up before the Ombudsman, in which case he or they are accountable and they shall be provided the opportunity of hearing. In any proceeding before the Ombudsman, if the facts reveal a case of illegal gratification, bribery or misappropriation the same shall be referred by him to the State Government for further action in accordance with law.

17. Appellate Authority.-

The State Government shall setup a three members Appellate Authority consisting of an academician, a retired civil servant and a civil society representative to consider representation by any party aggrieved by the awards of the Ombudsman. Such a representation shall be disposed of within a period of two months by the appellate authority. Office of the appellate authority shall be located in the office of the nodal department of the State Government implementing MGNREGA. Expenses of such an appellate authority shall be borne by the State Government from the 6% administrative expenditure permitted under clause (c) of sub-section (1) of section 22 of the MGNREGA.

18. Essential qualifications of member of Appellate Authority.-

- (i) minimum 30 years of experience in academics (teaching) or civil service or civil society organization-
- (ii) person with eminent standing and impeccable integrity;
- (iii) not a member of any political party or currently banned organization;
- (iv) physically active, capable of and willing to conduct filed visits to remote rural areas in the State;
- (v) below 66 years of age at the time of appointment;
- (vi) those who have completed at least 1 year as MGNREGA Ombudsman will be given preference;
- (vii) members of Appellate Authority will have a tenure of 2 years extendable not more than twice by one year each based on a performance appraisal process or till the incumbent attains the age of 68 years, whichever is earlier. There will be no reappointment;
- (viii) senior most of three members of the Appellate Authority shall be the Chairperson. The Chairperson shall allocate works (appeals) among members, including him/herself for consideration and report ; to the Authority;
- (ix) work of Chairperson and members of Appellate Authority is in the nature of pro-bono public service and no post is to be created;

(x) Chairperson and Members of Appellate Authority shall be entitled to get Rs.15,000/- as sitting fee with an upper limit of Rs. 30,000/- in 11 month. Sitting means per day functioning, irrespective of number of cases handled and its duration in terms of working hours. State Government may pay an additional amount, over and above the sitting fee prescribed by the Ministry, from its own financial resources. A sitting could be for a full day or part. For office work, the Appellate Authority shall operate from the premises of the State nodal department implementing MGNREGA and necessary logistics and administrative support shall be provided by the office of Secretary/Commissioner, MGNREGA. TA/DA at rates admissible to Class-I officers of the State Government may be allowed. State Government may provide vehicle(s) from its local pool to the Appellate Authority for official purpose as per need. However, no new vehicle can be purchased for the use of Appellate Authority from MGNREGA fund. In case of travel by Chairperson or members of Appellate Authority in his/her own or hired vehicle for official purpose, State Government concerned may reimburse the cost of travel, including waiting charges. State Government may fix rates for the purpose;

(xi) parties aggrieved by the awards of Ombudsman must make a signed written appeal to the Appellate Authority within 15 days of the submission of such finding with a copy of awards. The Appellate Authority shall dispose

an appeal within 2 months from the date of receipt. All decisions of the Appellate Authority on appeals against the awards of Ombudsman shall be taken by all three members together. In case of lack of consensus, all decisions shall be made by majority of the three, including the Chairperson. Decision of the Appellate Authority shall be final and binding on the original parties of the case and on the Ombudsman concerned. It will be the responsibility of Principal Secretary! Secretary, Nodal Department to enforce the decision of the Appellate Authority;

- (xii) a representative of Program Officer District Programme Co-ordinator may appear in cases where the District Programme Coordinator is a party unless there is clear personal failure;
- (xiii) all cases not involving complicated questions of fact or law shall be disposed of by Ombudsman within 15 days from the date of receipt of complaint. Other cases may be disposed of within 60 days;
- (xiv) in any proceeding before the Ombudsman if the facts reveal a case of illegal gratification, bribery or misappropriation and the Ombudsman is satisfied that the case is fit for further investigation by an appropriate court of law, the same shall be referred by the Ombudsman to the authority competent to sanction criminal prosecution of the persons involved in the case who shall take action in accordance with prescribed procedures;

(xv) representation of parties by Advocates is not permissible. The awards of Ombudsman would be strictly within the purview and confines of the MGNREG Act, the rules and the schemes formulated thereunder and the operational guidelines issued by the Government of India from time to time.

19. Action on reports of Ombudsman.-

- (1) The State Government shall set up a system nodal department to monitor the action taken on the awards of Ombudsman. Wherever action is not taken on the award, which has become final, disciplinary action shall be taken against the officers concerned.
- (2) Copy of the action taken report (ATR) shall be sent to the Ombudsman concerned immediately after action is taken and in no case more than 2 (two) months from the date of award reported by the Ombudsman.
- (3) The summary report of cases Ombudsman and action taken on the awards shall be reported to the State Employment Guarantee Council by the Secretary, State Nodal Department in its meetings and shall also form part of the annual report of the nodal, department.
- (4) The summary report of disposed cases by Ombudsman and action taken on the awards shall also be reported to the Ministry of Rural Development, Government of India for placing before the Central Employment Guarantee Council, by the Secretary, State Nodal Department.

Chapter V
Miscellaneous

20. Coverage of the Ombudsman under Right to Information Act, 2005.-

(1) Ombudsman shall be covered under the Right to Information Act, 2005. Nodal department of the State Government shall notify Public Information Officer and Appellate Authority for this purpose.

21. Periodic review of the functioning of office of Ombudsman in the State.-

The State Government shall carry out periodic review of the functioning of office of Ombudsman in the State.

22. Repeal and Saving.-

Notwithstanding anything contained in these rules anything done or any action taken under the said rules shall be deemed to have been done or taken under the corresponding rules.

By order and in the name of the Governor of Madhya Pradesh,
SHOBHA NIKUM, Under Secy.